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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,421	03/20/2001	David Weiss	2420-0034	9918

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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/811,421

Applicant(s)

WEISS ET AL.

Examiner

Joseph C. Merek

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-30, 32-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 16, 18-20, 22-30, 32 and 34 is/are rejected.
- 7) ☒ Claim(s) 17, 21 and 33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

Art Unit: 3727

### ***Drawings***

The drawing objection made in the previous office action has been withdrawn.

The drawings show that the closure surface extends from the lowest point of said inner wall.

### ***Claim Rejections - 35 USC § 112***

The rejections made in the previous office action have been withdrawn. The drawings now original disclosure supports that the closure surface extends from the lowest point on the inner wall at the opening. This is seen in Figs. 4-6.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 16, 18-20, 22, 29-30, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (US 5,538,154) in view of Bingisser (US 5,103,993). Regarding claim 15, 19, and 29, as they are best understood, Von Holdt does not teach the access opening in the closure surface. Bingisser, as seen in Fig. 4 and Col. 3 lines 19-21, teaches a similar container with an access port 16 in the closure surface. It would have been obvious to employ the access opening of Bingisser in the closure of Von Holdt to provide access to the container without removing the lid or to

Art Unit: 3727

provide a pouring opening. The openings of Von Holdt are in each of the four quadrants and mutually spaced. See Fig. 6 of Von Holdt where the rim of the container lid cylindrically circumscribes the container from the cutouts to the top edge or corner. The top edge or corner satisfies the outer edge limitation.

Claims 23-26 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (US 5,538,154) in view of Bingisser (US 5,103,993) and further in view of Yun (US 5,427,266). Regarding claim 23, Von Holdt does not teach the access opening in the closure surface. Bingisser, as seen in Fig. 4 and Col. 3 lines 19-21, teaches a similar container with an access port 16 in the closure surface. It would have been obvious to employ the access opening of Bingisser in the closure of Von Holdt to provide access to the container without removing the lid or to provide a pouring opening. The modified lid of Von Holdt does not teach the closure surface extending from a lowest point on the inner wall. Regarding claims 24-26, and 28, see the above discussions of Von Holdt and Bingisser.

Claims 15, 16, 18-20, 22-26, 28-30, 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fulton (US 3,858,756) in view of Obey (US 4,428,498). Regarding claims 15, 19, 23, and 29, as they are best understood, Fulton teaches at least one vent opening in the transition wall as seen in Figs. 1, 2, and 8 but does not specifically show more than one vent. The lid as seen in Figs. 1, 2, and 8, has four vent receiving areas. It would have been obvious to employ a vent in each one of these areas to provide the sufficient venting. Fulton does not teach each access opening. Obey teaches a similar lid with access opening 30. It would have been obvious to

Art Unit: 3727

employ the access opening of Obey in the lid of Fulton to allow for drinking without removing the lid. As seen in Fig. 4 of Fulton the closure surface extends from the lowest point on the inner wall. The outer wall is substantially planar. The openings are in each of the quadrants and are mutually spaced.

### ***Allowable Subject Matter***

Claims 17, 21, and 33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed 1/19/05 have been fully considered but they are not persuasive. Applicant presents arguments with respect to Von Holdt and Bingisser that the lids are for substantially permanent secured to the container. Applicant further goes on to discuss the structure of Von Holdt but fails to point out how the references fail to satisfy the claim limitations. It is the examiners position that the combination satisfies the claim limitations. Applicant should also note the embodiment of Von Holdt seen in Fig. 6.

Applicant argues that the combination of Fulton and Obey do not teach the claim structure since they do not provide a circumferential seal. The term "circumferential" only requires "of or like a circumference". It does not have to extend all the way around

Art Unit: 3727

the container. A seal that extends partially around the container satisfies the claim language.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

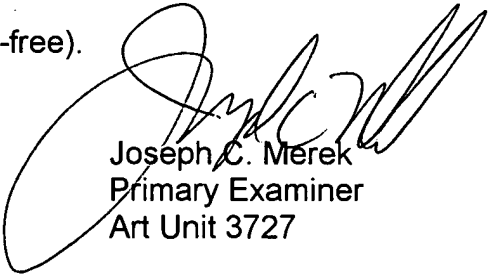
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is 571 272-4542. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (571) 272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek  
Primary Examiner  
Art Unit 3727